

STANDARD PROVISIONS

Encroachment Permit No. _____

1. Specific Purpose: This Encroachment Permit is to be strictly construed and no work, other than that specifically described herein, is authorized. Any reconstruction of, or additions or extensions to the permitted facility require an Encroachment Permit from State for such reconstruction of, or additions or extensions to the permitted facility.
2. Acceptance of Provisions: Permittee understands and agrees to acceptance of the provisions and all attachments to this Encroachment Permit, for any work to be performed under this Encroachment Permit.
3. Liability for Damages: The State of California and all officers and employees thereof shall not be answerable or accountable in any manner for injury to or death of any person, including but not limited to Permittee, persons employed by Permittee, or for damage to property from any cause. Permittee is responsible for all liability for personal injury or property damage which may arise out of work herein permitted including its operation, maintenance and use, or which may arise out of failure on Permittee's part to perform its obligations under this Encroachment Permit. In the event any claim of such liability is made against the State of California, or any department, officer or employee thereof, Permittee shall defend, indemnify and hold each of them harmless from such claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person, including but not limited to Permittee, persons employed by Permittee, persons acting in behalf of Permittee and the public, or damage to property resulting from the performance of work, use of permitted facilities, or other activity under the Encroachment Permit, or arising out of the failure on Permittee's part to perform its obligations under any permit in respect to maintenance or any other obligations, or resulting from defects or obstructions, or from any cause whatsoever during the progress of the work, or other activity or at any subsequent time work or other activity is being performed under the obligations provided by and contemplated by the Encroachment Permit, except as otherwise provided by statute. The duty of Permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Permittee waives any and all rights to any type of expressed or implied indemnity against the State, its officers, employees, and State contractors. It is the intent of the parties that Permittee will indemnify and hold harmless the State, its officers, employees, and State contractors, from any and all claims, suits or actions as set forth above regardless of the existence of degree of fault or negligence, whether active or passive, primary or secondary, on the part of the State, Permittee, persons employed by Permittee, or acting on behalf of Permittee.

For purposes of this Section, "State contractors" shall include contractors and their subcontractors under

contract to the State of California performing work within the limits of this Encroachment Permit.

4. Insurance: If required, Permittee shall furnish to State a Certificate of Insurance, at the time the Encroachment Permit is signed and returned by Permittee, stating that there is liability insurance presently in effect for Permittee with bodily injury and property damage limits of not less than \$1,000,000 per occurrence. The Certificate of Insurance will provide:
 - a. That the insurer will not cancel the insured's coverage without 30 days' prior written notice to State.
 - b. That the State, its officers, agents, employees and servants are included as additional insureds, but only insofar as the operations under this Encroachment Permit are concerned.
 - c. That the State will not be responsible for any premiums or assessments on the policy.
 - d. That all work under this Encroachment Permit (referenced by Encroachment Permit number) is covered by the policy.

Permittee agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the period indicated on the cover sheet of this Encroachment Permit. In the event said insurance coverage expires at any time or times during the required period, Permittee agrees to provide at least thirty (30) days prior to said expiration date, a new Certificate of Insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the required period, or for a period of not less than one (1) year. In the event Permittee fails to keep in effect at all times insurance coverage as herein provided, State may, in addition to any other remedies it may have, terminate this Encroachment Permit upon the occurrence of such event.

5. Damage and Water Contamination Avoidance Warranty: Permittee shall exercise reasonable diligence and precaution in the construction, installation, maintenance and use of structures, appurtenances, equipment, and tools on the lands of State to avoid damage or injury to the right of way, facilities, or personnel of State and the public and to preclude interference with operations of State. No material capable of water pollution shall be stored or discharged by Permittee within the drainage areas or waters of State's facilities. Permittee shall use all diligence and caution to prevent contamination or pollution of the waters of the State aqueduct system.

6. Damage Repairs: Permittee will be liable for any damage to State's facilities as a result of the proposed construction and for any other damages, including power, irrigation, municipal and industrial water supply, and communication losses. If Permittee damages, injures or disturbs State's right of way or facilities, State may elect to do its own repairs. Repairs to any of Permittee's facilities covered by this Encroachment Permit which State considers necessary to prevent damage or nuisance to State's facilities may be done by State at Permittee's expense if Permittee fails to make such repairs within 10 days after receiving written notice to do so. In either cases, all expenses of such repair including State's administrative costs shall be borne by Permittee, State may require a deposit sufficient to pay the estimated repair cost, and Permittee agrees by acceptance of this Encroachment Permit to furnish such a deposit upon request.
7. Conflicting Encroachments: Permittee shall yield start of work to ongoing prior authorized work. When existing encroachments or installations may conflict with permitted facilities or work, Permittee is responsible for identifying and protecting said encroachments or installations unless other disposition has been authorized by the owning and operating entities.
8. Notice Prior to Starting Work: Before starting work Permittee shall notify State by contacting State's representative as shown on this Encroachment Permit's cover page, form DWR 33A, hereafter referred to as State's representative, and any other departmental employees designated. Such notice shall be given at least seven (7) days in advance of the date the work is to begin.
9. Keep Permit on the Work Site: During any period when any work is being pursued, this Encroachment Permit or a copy of the signed Encroachment Permit and the plans bearing the original DWR stamp with signature and date of DWR staff shall be kept at the site of the work and must be shown to any representative of State or any law enforcement officer on demand. It is a violation of Encroachment Permit conditions and work shall be suspended if the Encroachment Permit Package is not kept and available at the work site.
10. Permits From Other Agencies: This Encroachment Permit shall not obviate the need for any and all permits or approval required by law, whether from the Public Utilities Commission of the State of California (PUC), California Department of Fish and Game, California Occupational Safety and Health Administration (CAL-OSHA), or any other public agency having jurisdiction.
11. Public Safety: Permittee shall furnish, erect and maintain such fences, barriers, lights and signs and provide such flagmen and guards as are necessary to give adequate warning to the public of the construction of the encroachment and of any dangerous condition to be encountered as a result thereof.
12. Access Gates and Fencing: Alteration of State's fencing is permitted only as specifically described in this Encroachment Permit or as directed by State's Representative. All gates installed in State's right of way fencing as a means of access to Permittee's encroachment shall be constructed of materials and to standards at least equal to those of the existing fence. Before cutting the fence, Permittee shall install braces and additional posts, if necessary, on each side of the gate opening and shall anchor the fence to maintain tension in the wires. Such gates shall be kept in good repair by Permittee. Gates shall be kept closed and locked except when in actual use. State will at all times be allowed full use of said gates and, at the request of State's representative, will be allowed to place its locks in the chains securing the gates.
13. Hazardous Substances: Permittee agrees that it will comply with all laws, including Federal, State, or local, existing during the term of this Encroachment Permit pertaining to the use, storage, transportation and disposal of any hazardous substance as that term is defined in such applicable laws. In the event State or any other State agencies, officials, employees, agents or successors should incur any liability, cost or expense, including attorneys' fees and costs, as a result of Permittee's use, storage, transportation or disposal of any hazardous substance, including any petroleum derivative, Permittee shall indemnify, defend and hold harmless any of these entities or individuals against such liability. Where Permittee is found to be in breach of this provision due, for example, to the issuance of a government order directing Permittee to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by Permittee or any person acting under Permittee's direction, control and authority, Permittee shall be responsible for all costs and expenses of complying with such order including any and all expenses imposed on or incurred by State in connection with or in response to such government order.
14. Public Utilities Commission Orders: All clearances and types of construction shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California, unless otherwise modified herein or unless more restrictive provisions are required by County Ordinance.
15. Maintenance: Permittee shall operate and maintain properly any encroachment on State's right of way, make certain any encroachment is not damaging State's right of way or facilities, and immediately repair and make good any injury to any of State's improvements which occur as a result of the work done under this Encroachment Permit, including any and all injury to the State's facilities which would not have occurred had such work not been done or such encroachment not been placed therein.
16. Notice to State for Maintenance: Permittee will notify State's representative before entering State's right of way to do maintenance work. When entry is required for routine inspection maintenance activities, adequate notice may be a telephone call or a formal written communication at the discretion of State's representative. Permittee may enter without notice for emergency repair or maintenance purposes, but shall notify State's representative within 24 hours of entry. Maintenance requiring alteration of Permittee's facilities, tunneling or excavation requires State's prior written approval.

17. Clean Up Right of Way: All trash, including waste food, must be removed from the work site at the end of the work day/night. Upon completion of the work, or maintenance or removal thereof, all waste material and debris shall be entirely removed from the work site and the site left in as presentable a condition as before the work started. All chemical spills must be cleaned up immediately and reported as soon as possible.
18. Archaeological: Should any archaeological resources be revealed in the State's right of way Permittee is responsible for notifying State's Representative immediately, ceasing work and retaining a qualified archaeologist who shall evaluate the archaeological site and make recommendations to the State's Representative regarding the continuance of work.
19. Facilities Subject to Damage, Destruction and Removal Without Compensation: The facilities or structures installed under this Encroachment Permit are subject to interruption, damage, destruction or removal at any time by State without compensation or liability in exercising any and all State's property rights or otherwise responding to public needs, and shall be subsequently reconstructed or restored at Permittee's expense. Permittee agrees to reimburse State for all extra costs of work performed to remove, dismantle, or destroy facilities or structures interfering with the exercise of State's rights. This Encroachment Permit grants no rights or warranty as to the availability or suitability of the land or State's rights therein for the facilities installed under this Encroachment Permit.
20. Supervision of State: All the work shall be done subject to the supervision of, and to the satisfaction of State, however, neither the supervision nor lack of supervision of the work by State will relieve Permittee of any obligations under the provision above entitled "Liability for Damage." State may, but is not required to, inspect any work performed under this Encroachment Permit. Equipment and Material storage in State right of way shall be at the direction of State's Field Division personnel.
21. Reimbursement of Costs: Permittee shall pay State for all reasonable time spent in reviewing plans, testing, issuing Encroachment Permits, inspecting Permittee's work performed in, along, under or near State's right of way, or ensuring compliance of the terms and conditions of this Encroachment Permit. On work which requires the presence of an employee of State as inspector, the salary, traveling and per diem expenses and other incidental expense of such inspection during the work shall be paid by Permittee upon presentation of a bill therefore.
22. Cost of Work: Unless stated in the Encroachment Permit, or separate written agreement, all costs incurred for work within State's rights of way pursuant to this Encroachment Permit shall be borne entirely by Permittee. Permittee hereby waives all claims for indemnification or contribution from State for any such work.
23. Submit As-Built Plans: Upon completion of all work within State's right of way, including any future construction or reconstruction, Permittee shall furnish reproducible as-built drawings to State's representative showing location and details of construction. Failure to submit as-built plans within sixty (60) days of completion may result in written notice of revocation as provided for under Provision 25 of this Encroachment Permit.
24. Future Moving of Installations: Permittee shall, on receipt of notice to do so and within 90 days unless otherwise approved by State, alter or remove at the sole expense of Permittee any property or structures covered by this Encroachment Permit, to such extent as may be necessary to avoid or eliminate interference with any facilities or structures now constructed or to be constructed by State, or with any operations of State, or with any use by State of the land affected hereby. Should Permittee fail to alter or remove the property or structures covered by this Encroachment Permit, and restore State's right of way and facilities to their condition prior to issuance of this Encroachment Permit, State will perform such work or have the work performed, and Permittee agrees to reimburse State for all costs of the work so performed including attorney's fees.
25. Termination, Revocation and Modification of Permit: This Encroachment Permit shall be revocable by State upon ten days' written notice to Permittee unless otherwise stated on the Encroachment Permit, and except as provided by law for public corporations, franchise holders, and utilities. Permittee's joint use agreements, franchise rights, reserved rights, or any other agreements for operating purposes in rights of way are an exception to this revocation. In the event that Permittee abandons the use of said facilities for a period of one year, or fails, neglects or refuses to comply with any of the conditions herein contained, or in the event that this Encroachment Permit is revoked, all rights of Permittee hereunder shall cease and terminate. Encroachment Permit provisions are subject to modification or abrogation at any time.
- Upon abandonment or termination, or if required by Encroachment Permit modification, Permittee shall remove all facilities installed pursuant to this Encroachment Permit, or make any alterations required by Encroachment Permit modification, and restore right of way to the condition prior to installation of facilities pursuant to this Encroachment Permit. All work to remove, alter, secure or restore required in this section shall be completed as soon as possible and at the sole expense of Permittee.
26. Future Construction or Reconstruction: Plans for any future construction or reconstruction within the permitted area shall be submitted to the State Department of Water Resources for review and approval of the effect of the construction or reconstruction on Permittee's facilities. Such approval may be withheld for any reason.
27. No Precedent Established: This Encroachment Permit is issued with the understanding that it does not establish a precedent.

28. Captions: This Encroachment Permit shall be construed as a whole and, in accordance with its fair meaning, the captions being for the convenience of the parties only, and not intended to describe or define the provisions in the portions of the Encroachment Permit to which they pertain.
29. Permits for Record Purposes Only: When work in rights of way is within an area under a Joint Use Agreement (JUA) or a Consent to Common Use Agreement (CCUA), this Encroachment Permit will be issued to Permittee for the purpose of providing a notice and record of work. All prior rights of Encroachment Permittee shall be preserved; no new or different rights or obligations are intended to be created.
30. Assignments Not Permitted: No right or interest included in said Encroachment Permit shall pass by assignment by Permittee without written permission from State, except upon dedication and/or acceptance for operation and maintenance by a public utility or municipality. No party other than Permittee or Permittee's authorized agent is allowed to work under this Encroachment Permit.
31. No Third Party Beneficiaries: This Encroachment Permit is made solely for the benefit of Permittee and is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto, and no person, firm, association, corporation or public entity other than Permittee shall have any right to enforce this Encroachment Permit under California Civil Code Section 1559 or otherwise.